

Distribution of the proceeds in connection with the reserve tonnage contributed by a nonprofit cooperative marketing association which has authority to market the raisins of its members and to allocate the proceeds therefrom to such members shall be made to such association. Advance or progress payments may be made by the committee, in conformity with the provisions of this paragraph, as sufficient funds become available.

[32 FR 12161, Aug. 24, 1967, as amended at 37 FR 19623, Sept. 21, 1972; 41 FR 32417, Aug. 3, 1976; 42 FR 37202, July 20, 1977; 48 FR 32977, July 20, 1983; 54 FR 34138, Aug. 18, 1989]

**§ 989.67 Disposal of reserve raisins.**

(a) At the time the committee meets to consider free and reserve percentages for a crop year, the committee shall consider the marketing of reserve tonnage raisins for the subsequent 12-month period. The committee shall dispose of all reserve tonnage in such manner as to achieve, as nearly as may be practicable, maximum disposal of such raisins by the time reserve tonnage raisins from the subsequent crop year are available. Any reserve tonnage raisins held unsold by the committee on May 1 of the subsequent crop year shall be physically disposed of promptly in any available outlet not competitive with normal market channels for free tonnage raisins or sales of new crop reserve tonnage raisins in export: *Provided*, That, whenever the Secretary finds, based upon a recommendation of the committee, or on the basis of information otherwise available to him that because of national emergency, crop failure, an insufficient supply of reserve tonnage raisins for export, or other change of economic or marketing conditions, retention of reserve tonnage raisins carried over is warranted, the foregoing requirements as to disposal shall not apply and such raisins may be disposed of in any outlet recommended by the committee and approved by the Secretary.

(b) Reserve tonnage raisins shall be disposed of by the committee: (1) By sale to handlers for sale in specified outlets or for resale to exporters for sale in export outlets; (2) by direct sale to any agency of the U.S. Government

for noncompetitive use; (3) by direct sale to foreign government agencies or foreign importers in any country not listed pursuant to paragraph (c) of this section or where the procurement of raisins is so regulated as to preclude purchases from domestic handlers; (4) by gift; and (5) by any other means consistent with the provisions of this section, and in outlets noncompetitive with those for free tonnage raisins.

(c) The committee shall sell reserve raisins to handlers for export sale to countries on a list established by the Secretary, on the basis of the recommendation of the committee or from other available information. The list of countries shall be reviewed by the committee annually when it reviews matters relating to the free tonnage, and shall recommend any changes in the list to the Secretary for approval. No country may be removed from the list for the purpose of permitting direct sale by the committee unless a finding is made by the committee and approved by the Secretary, that such removal and subsequent direct sale by the committee shall not lead to disruption of sale of reserve tonnage raisins by handlers in other countries on the list, and that although handlers have been able to offer reserve tonnage raisins at competitive prices to the country to be so removed, there remains an unfilled demand in such country which has not been supplied by handlers and which could be supplied by the committee at the same prices by means of direct sale.

(d)(1) Reserve tonnage raisins shall be sold to handlers at prices and in a manner intended to maximum producer returns and achieve maximum disposition of such raisins by the time reserve tonnage raisins from the subsequent crop year are available. The committee may pay the cost of transporting reserve tonnage from one handler to another and in the event a handler has more than one plant, the committee may pay the cost of transporting reserve tonnage to the handler's plant of its choice. In each offer or reoffer of reserve tonnage raisins for export, the committee may include a quantity of raisins not to exceed 2 percent of the total tonnage offered in such offer or reoffer, which it may sell to handlers

whose regular allocation provides insufficient tonnage to fill a containerized freight shipping container: *Provided*, That such sale may be made only when the remaining portion of a handler's regular allocation will fill at least 50 percent of such container and shall be made to a handler only one time in each offer or reoffer of reserve tonnage raisins. No offer or reoffer shall be made until 5 days (exclusive of Saturdays, Sundays, and holidays) have elapsed from the time it files with the Secretary complete information as to varietal type, quantity, and price involved in such offer or reoffer, and the Secretary may disapprove the offer or reoffer or any term thereof: *Provided*, That at any time prior to the expiration of the 5-day period, the offer or reoffer may be made to handlers upon the committee receiving from the Secretary notice that he does not disapprove the making of the offer or reoffer. Subject to the same conditions as are set forth in the preceding sentence with respect to the making of such offer or reoffer, the committee may withdraw an offer or reoffer to sell reserve tonnage raisins to handlers or may extend the offer or reoffer period but not when such extension would deprive one or more handlers of an opportunity to purchase raisins.

(2) Except for the final offer of the reserve tonnage from a crop year, an offer of reserve tonnage raisins for export shall provide for a specific tonnage. Each handler's share of the reserve tonnage offered prior to November 1 of any crop year shall be determined as the same proportion of the quantity offered that the free tonnage raisins acquired by him during the preceding crop year is of the free tonnage raisins acquired by all handlers during the preceding crop year who remain handlers. If reserve tonnage raisins have been removed by the committee from a handler's premises pursuant to § 989.66(f), such handler's allocation of reserve pool offers subsequent to such removal and prior to November 1 of the following crop year shall be reduced by the percentage such removed reserve tonnage is of the total reserve tonnage acquired by such handler in the crop year. Subsequent to October 31, each handler's share shall be determined as

the same proportion of the quantity offered that the free tonnage raisins acquired by the handler during the then current crop year is of the total free tonnage raisins acquired by all handlers during the then current crop year. With respect to any offer other than the initial offer, each handler's share of the total quantity offered as of that date (the then current offer plus all prior offers of that crop year) shall first be determined by the appropriate formula. His share of the current offer shall then be determined by subtracting from his share of the total quantity offered, the total of his share of prior offers from the beginning of the crop year. If any handler did not acquire raisins during the preceding crop year, the basis for his share of any quantity of reserve tonnage raisins offered prior to November 1 shall be his acquisitions of free tonnage raisins during the then current crop year. The current free tonnage acquisitions of all such new handler shall, for the purposes of determining the shares of all handlers prior to November 1, be added to the total acquisitions of free tonnage raisins during the preceding crop year of all handlers in business at the time the offer is made.

(3) With respect to any offer of reserve tonnage for sale to handlers for resale in export, the committee may provide that any such tonnage unpurchased at the end of the share reservation period will be reoffered to handlers without regard to shares and that approval for handlers' applications for purchase may be made in the same order in which the applications are received by the committee. Such reoffer may be made by the committee at the time it makes a regular offer of reserve tonnage, at any time during the period a regular offer is in effect, or within a reasonable time after a regular offer has expired.

(4) The final offer of the reserve tonnage from a crop year may be offered to handlers without regard to shares and approval of handlers' applications for purchase may be made in the same order in which the applications are received by the committee.

(5) Whenever a handler's share or allocation pursuant to this paragraph is

less than or exceeds his holdings of reserve tonnage by a minor quantity, the committee may adjust the handler's share or allocation so as to avoid the cost of the physical transfer. The maximum quantity by which a handler's share or allocation may be so allocated shall be prescribed in rules and procedures which the committee shall establish with the approval of the Secretary.

(e) The committee may sell reserve tonnage raisins as provided in paragraph (b)(3) of this section only when such country is not included in the list of specified countries established pursuant to paragraph (c) of this section and may sell reserve tonnage raisins to foreign government agencies of foreign importers in any country removed from such list. No agreement to sell reserve tonnage raisins shall be entered into by the committee until 5 days (exclusive of Saturdays, Sundays, and holidays) have elapsed from the time it files with the Secretary complete information as to varietal type, quantity, price and foreign country involved in any such proposed sale, and the Secretary may disapprove such sale or any term thereof: *Provided*, That, at any time prior to the expiration of the 5-day period, the sale may be made upon the committee receiving from the Secretary notice that he does not disapprove the making of the sale.

(f) Whenever the committee concludes that the orderly disposition of reserve tonnage would be promoted by the committee replacing any portion or all of handlers' export shipments of free tonnage raisins, to other than free tonnage outlets, made prior to the committee's first offer to sell reserve tonnage, it may do so and may specify such requirements and conditions as are necessary to carry out the replacement consistent with the objectives of this amended subpart. The committee may establish a price for such replacement tonnage which is higher, the same as, or lower than that for reserve tonnage in the first offer of the crop year. Any such replacement offer by the committee shall be governed by those provisions of paragraph (d)(1) of this section which prescribe prior action by the Secretary on committee offers to sell tonnage to handlers.

(g)(1) The committee may, subject to review by the Secretary, refuse to sell reserve tonnage raisins for export:

(i) To any handler who is in default on any previous purchase of reserve tonnage raisins from the committee;

(ii) To any handler currently not in compliance with the provisions of a sales agreement covering reserve tonnage raisins, executed by such handler with the committee; or

(iii) To any handler who signifies an intention to sell reserve tonnage to or through any person who has previously failed to complete a sale of reserve tonnage raisins to a foreign buyer and such raisins remain to be exported and remain unsold to any foreign buyer in an eligible export market.

(2) Handlers who are in default of timely payment under any purchase agreement are subject to an interest and late payment charge(s) recommended by the committee and approved by the Secretary on the delinquent amount that is owed the committee. The interest charge shall be the current prime rate plus 2 percent established by the bank in which the committee has its administrative assessment funds deposited, on the day the amount owed becomes delinquent; and further, that such rate of interest be added to the bill monthly until the handler's delinquent amount owed plus applicable interest has been paid: *Provided*, That the committee, with the approval of the Secretary, may recommend changes in the rate of interest to another rate of interest. When the committee determines to change the rate of interest or a late payment charge is needed, and such change is approved by the Secretary, the committee shall announce the change in the rate of interest or the rate of late payment charge through a mailing by the committee to handlers.

(3) *Appeals*. If a determination is made by the committee that a handler has not complied with the provisions of this section and any actions allowed under this section are taken against the handler, such handler may request a hearing before an appeals subcommittee established by the committee. If the handler disagrees with

the subcommittee's decisions, the handler may request the committee to review the subcommittee's decision. The committee may, subject to the approval of the Secretary, establish additional procedures concerning appeals.

(h) Each packer's share of an offer of reserve tonnage raisins for contract packing shall be determined as the same proportion that the reserve tonnage raisins acquired by him is of the reserve tonnage raisins acquired by all packers. In the event that any packer fails to contract for packing any or all of his share of any offer, the remaining portion thereof shall be reoffered by the committee to all packers who contracted for packing all of their respective shares, in proportion to their respective acquisitions: *Provided*, That, if such amount which packers fail to contract for packing does not exceed 250 tons, or if it is necessary to deviate from the foregoing in order to meet terms and conditions of shipment, the committee may, in its discretion, allocate such reserve tonnage raisins among packers as it deems appropriate, but the shares of packers in subsequent offers or reoffers shall be adjusted accordingly.

(i) In the event the committee determines that the applicable procedures as specified in paragraphs (d) and (h) of this section will not provide an allocation for handlers which is suitable for a particular situation, the committee, with the approval of the Secretary, may establish such modifications of procedures, consistent with § 989.66(e), as will facilitate the disposition of reserve tonnage through the handlers.

(j) The committee shall not sell reserve tonnage raisins of any varietal type to handlers to provide them with raisins to sell as free tonnage, other than as provided in § 989.54, unless it files with the Secretary complete information and receives from the Secretary notice that he does not disapprove of such sale and that because of: National emergency, crop failure; change of economic or marketing conditions; free tonnage shipments during the then current crop year exceeding shipments of a comparable period of the prior crop year by more than 5 percent: *Provided*, That, such sale of reserve tonnage shall be limited to the

quantity exceeding 105 percent of shipments for the first 10 months of the prior crop year; and/or an inadequate carryover, the free tonnage outlets cannot be reasonably well supplied by the tonnage released to the industry as a whole by the committee's marketing policy for that varietal type. Any quantities of reserve raisins offered to handlers for free use, except as provided in § 989.54(g), may be offered to them on the basis of handler shipments or acquisitions in the same manner as in paragraph (d)(1) of this section. If offered on the basis of acquisitions, shares shall be determined pursuant to paragraph (d)(2) of this section. If offered on the basis of shipments, the same formula shall be used, except that shipments shall be used as the basis instead of acquisitions in computing handlers' shares. However, such raisins shall not be sold at a price below that which the committee concludes reflects the average price received by producers for free tonnage of the same varietal type purchased by handlers during the current crop year up to the time of any offer for sale of reserve tonnage by the committee, to which shall be added the costs to the equity holders incurred by the committee on account of receiving, inspecting, storing, fumigating, insuring, and holding of said raisins, and including costs of taxes and interest: *Provided*, That, where the outlook for the next crop year or other factors have caused a downward trend in the prices received by producers for free tonnage raisins or in the prices received by handlers for free tonnage packed raisins, reserve tonnage may be sold to handlers at the currently prevailing or the approximate computed field price for free tonnage raisins, as determined by the committee. The committee may sell reserve tonnage raisins of any varietal type to any handler to provide him with raisins to sell as free tonnage if such handler has lost all or part of his free tonnage because of fire or other disaster beyond his control subject to

## § 989.70

the applicable provisions of this paragraph and in an amount equal to such tonnage so lost.

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EFFECTIVE DATE NOTE: At 62 FR 50484, Sept. 26, 1997, in § 989.67, at paragraph (j), the words "by more than 5 percent" and "105 percent of" in the first sentence were suspended indefinitely, effective Sept. 29, 1997.

### § 989.70 Storage of raisins held on memorandum receipt and of packer-owned tonnage.

All raisins stored by a handler for another person on memorandum or warehouse receipt, or raisins produced and stored by a handler, shall be stored separate and apart from other raisins and shall be clearly marked or tagged as raisins stored on memorandum or warehouse receipt or as raisins produced by the handler but not acquired by him in his capacity as a handler.

### § 989.71 Disposition of unsold reserve tonnage in above parity situations.

In the event that the Secretary should find, during a crop year when reserve tonnage percentages have been designated and are in effect pursuant to this part, that the estimated season average price for raisins for that crop year will be in excess of the price level contemplated by the provisions of section 2(1) of the act, he shall issue an order providing for the orderly disposition of the unsold reserve tonnage then on hand, in such outlets, at such times, and in accordance with such terms and conditions, as he may determine to be appropriate in the circumstances. In determining the liquidation procedures and terms, the Secretary shall give consideration to the data and recommendations, if any, which may be submitted by the committee.

[32 FR 12164, Aug. 24, 1967]

### § 989.72 Exemption of educational institutions.

The committee may exempt, wholly or in part, from the volume regulation provisions of this part, that volume of raisins received or acquired by public or private educational agencies or in-

## 7 CFR Ch. IX (1-1-08 Edition)

stitutions incidental to or in connection with teaching, experimental, or research activities.

### REPORTS AND RECORDS

#### § 989.73 Reports.

(a) *Inventory reports.* Each handler shall, upon request of the committee, file promptly with the committee a certified report, showing such information as the committee shall specify with respect to any raisins which were held by him on a date designated by the committee, which information as specified may include, but not be limited to: (1) The quantity of any raisins so held, segregated as to varietal type, natural condition, packed, standard quality or off-grade quality; and (2) the locations of the raisins.

(b) *Acquisition reports.* Each handler shall submit to the committee in accordance with such rules and procedures as are prescribed by the committee, with the approval of the Secretary, certified reports, for such periods as the committee may require, with respect to his acquisitions of each varietal type of raisins during the particular period covered by such report, which report shall include, but not be limited to: (1) The total quantity of standard raisins acquired; (2) the quantity of reserve tonnage referable to his acquisitions of standard raisins; (3) the locations of such reserve tonnages; (4) the total quantity of off-grade raisins acquired pursuant to § 989.58(e)(1)(i), and (5) cumulative totals of such acquisitions from the beginning of the then current crop year to and including the end of the period for which the report is made. Upon written application made to the committee, a handler may be relieved of submitting such reports after completing his packing operations for the season. Upon request of the committee, each handler shall furnish to the committee, in such manner and at such times as it may require, the name and address of each person from whom he acquired raisins and the quantity of each varietal type of raisins acquired from each such person.

(c) Each handler shall file such reports of creditable promotion including paid advertising as recommended by